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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Lynda Guber

Serial No. 76469243

Anthony M. Keats of Keats McFarland & Wilson for Lynda Guber.

Lourdes D. Ayala, Examining Attorney, Law Office 106 (Mary Sparrow, Managing Attorney).

Before Hanak, Hohein and Rogers, Administrative Trademark Judges.

Opinion by Hanak, Administrative Trademark Judge:

Lynda Guber (applicant) seeks to register in typed drawing form CONTACT YOGA for "books and magazines on the subject of meditation and exercise, manuals on the subject of instruction, newsletters featuring information about exercise, educational books and printed instructional, educational and teaching materials on the subject of meditation and exercise." The intent-to-use application was filed on November 22, 2002. Applicant disclaimed the

exclusive right to use YOGA apart from the mark in its entirety.

Citing Section 2(e)(1) of the Trademark Act, the Examining Attorney refused registration on the basis that applicant's mark is merely descriptive of applicant's goods. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

A mark is merely descriptive pursuant to Section 2(e)(1) of the Trademark Act if it immediately conveys information about a significant quality or characteristic of the relevant goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Bed & Breakfast Registry, 791 F.2d 157, 229 USPQ 818, 819 (Fed. Cir. 1986). Of course, it need hardly be said that the mere descriptiveness of a mark is judged not in the abstract, but rather is judged in relationship to the goods or services for which the mark is sought to be registered. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 216 (CCPA 1978). Finally, a mark need describe only one significant quality or characteristic of the relevant goods or services in order to be held merely descriptive. In re Gyulay, 3 USPQ2d at 1010.

In support of her refusal, the Examining Attorney has made of record articles and advertisements taken from the Internet wherein the term "contact yoga" is used. One article reads as follows: "Contact yoga brings people together. If you've considered taking up yoga, but crowded classes and lack of personal attention chase away all thoughts of melding mind and body into one, you should check out 'contact yoga.' True to its name, this relatively new practice is yoga done with a partner. The partner aids and assists the other person in the postures, helping ensure proper form." An Internet advertisement for "contact yoga" was placed by CIRCUS MINIMUS for a workshop in North Carolina scheduled for May 12, 2003. Another Internet article speaks of "contact yoga" in the following terms: "Contact Yoga is an emerging form of partner yoga. ... Contact yoga can be adapted to every level of practice, so that students who are new to yoga can benefit as much as experienced yogis."

Based upon the foregoing Internet articles and advertisements, it is clear that "contact yoga" is a term which describes a relatively new form of yoga where one practices with a partner. Hence, the refusal to register CONTACT YOGA pursuant to Section 2(e)(1) is affirmed on the

basis that the term "contact yoga" merely describes a particular type of yoga.

Without providing any evidentiary support whatsoever, applicant makes essentially two arguments as to why her purported "mark" CONTACT YOGA is not merely descriptive. First, applicant argues that she "created the mark CONTACT YOGA six years ago to suggest the physical and spiritual connection experienced by individuals practicing meditation and exercise." (Applicant's brief page 9). Second, applicant contends that she is "preventing others from using its [sic, her] mark." (Applicant's brief page 9).

Even assuming purely for the sake of argument that applicant did indeed first use the term "contact yoga," this does not mean that this term is not merely descriptive of books, magazines, manuals and other materials on the subject of meditation and exercise. In re Acuson, 225 USPQ 790 (TTAB 1985) and In re National Shooting Sports Foundation, Inc., 219 USPQ 1018 (TTAB 1983).

Second, as for applicant's purported efforts to stop others from using her "mark," we have already noted that applicant has not provided any evidentiary support whatsoever to demonstrate that she is making such efforts. In any event, her efforts appear unsuccessful given the Internet articles and advertisements showing that others

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are using the term "contact yoga" to describe a type of yoga where one practices with a partner.

Decision: The refusal to register is affirmed.